

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 22-mj-01047 (RER)
: :
: :
- versus - : U.S. Courthouse
: Brooklyn, New York
DARNELL BURGESS, : :
: :
: October 11, 2022
Defendants : 3:06 p.m.
-----X

TRANSCRIPT OF CRIMINAL CAUSE FOR ARRAIGNMENT
BEFORE THE HONORABLE PEGGY KUO
UNITED STATES MAGISTRATE JUDGE

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1 THE CLERK: Criminal Cause for an Arraignment.
2 It's 22-mj-1047, *United States v. Darnell Burgess*.

3 Counsel, state your appearances, please,
4 starting with the government.

5 MS. McTAGUE: Thank you. Good afternoon, your
6 Honor. Kaitlin McTague for the government.

7 MR. SUNDARAM: For Darnell Burgess, Kannan
8 Sundaram, Federal Defenders of New York accompanied by
9 Mia Halsey who's a social worker intern that's working
10 for us. Good afternoon.

11 THE COURT: The purpose of the proceeding today
12 is to make sure you understand your rights and what
13 you're being charged with, and to determine whether you
14 should be released on bail or held in jail.

15 You have the right to remain silent. You're
16 not required to make any statements. If you've made any
17 statements, you don't need to make any more. If you
18 start to make a statement, you can stop at any time. Any
19 statements you do make can be used against you.

20 You have the right to an attorney. If you
21 can't afford one, the Court will appoint an attorney to
22 represent you.

23 I see from your financial affidavit that you
24 qualify to be appointed counsel, so the Court will
25 appoint Mr. Sundaram and the Federal Defenders of New

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1 York to represent you.

2 You have been charged in a complaint with
3 transporting and receiving and attempting to transport
4 and receive an explosive that is black powder with the
5 knowledge and intent that it will be used to kill,
6 injure, and intimidate any individual and unlawfully
7 damage and destroy a building and other property.

8 You're also charged with using the internet to
9 willfully make a threat to injure, kill, or intimidate
10 one or more witnesses. There are three Jane Does. And
11 unlawfully to damage and destroy a building and other
12 property.

13 Did you receive a copy of the complaint?

14 THE DEFENDANT: I have. Yes, ma'am.

15 THE COURT: Did you have a chance to talk to
16 your lawyer about it?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Do you understand what you're being
19 charged with?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Mr. Sundaram, did you
22 discuss a preliminary hearing with your client?

23 MR. SUNDARAM: Yes, your Honor. Mr. Burgess is
24 going to waive a preliminary hearing.

25 THE COURT: All right. Thank you. Let me take

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1 this opportunity to remind the prosecution pursuant to
2 Federal Rule of Criminal Procedure 5(f) of its
3 obligations under *Brady v. Maryland* and its progeny to
4 disclose to the defense all information whether
5 admissible or not that is favorable to the defendant
6 material either to guilt or to punishment and known to
7 the prosecution. The prosecution must make good faith
8 efforts to disclose such information to the defense as
9 soon as reasonably possible.

10 I will be entering a written order that more
11 fully describing this obligation and the possible
12 consequences of failing to meet it and I direct the
13 prosecution to review and comply with that order.

14 Ms. McTague, does the prosecution confirm that
15 it understands its obligations and will fulfill them?

16 MS. McTAGUE: Yes, your Honor.

17 THE COURT: All right. Thank you. So Mr.
18 Sundaram, what would you like to do? Well actually, let
19 me ask is the government seeking detention in this case?

20 MS. McTAGUE: Yes, your Honor, and we are in
21 agreement with Pretrial Services that the defendant
22 should be detained.

23 THE COURT: All right. And Mr. Sundaram, I
24 understand you oppose this?

25 MR. SUNDARAM: That's correct.

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1 THE COURT: Okay. I had heard that there was
2 some material some party wanted me to review and so --

3 MR. SUNDARAM: Yes.

4 THE COURT: -- I'm happy to look at it, I just
5 don't know what it is.

6 MR. SUNDARAM: Okay. So I'd like to just give
7 you a summary of that. And I obviously, you know, it's
8 up to the Court whether you want to review the material.
9 But I'll tell you what it is and why I think it would be
10 useful in whatever determination you make for you to
11 review the material. I can summarize it.

12 Essentially, and this isn't evident from the
13 complaint but Mr. Burgess was sent from -- so he was
14 living in the shelter described in the complaint in the
15 spring. We don't have the exact time frame, but at the
16 time of the alleged conduct. Subsequently was
17 transferred to a different shelter which is -- I think
18 the acronym is JAMS, but it's at 3600 Jerome Avenue in
19 the Bronx. And there's a program affiliated with that
20 shelter called Bronx Works. Mr. Burgess has a social
21 worker there. And what happens to him and where he's
22 placed is all governed by Department of Homeless
23 Services, DHS, the state organization.

24 So essentially based in large part on the same
25 information or allegations that are recited in the

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1 complaint at least with respect to the bomb making
2 equipment, Mr. Burgess was transferred to a different
3 shelter. He was hospitalized twice. And most recently
4 he was hospitalized from September 23rd until the
5 present. And then what happened is I think the marshals
6 or federal law enforcement arrested him yesterday as he
7 was released from the hospital. So he was really
8 actually released and they took custody of him and took
9 him to the MDC.

10 But what's been happening since his admission
11 to Montefiore Hospital on September 23rd is -- and the
12 Court may already have familiarity with this, I don't
13 know if you do. I have some familiarity with the New
14 York mental hygiene law but there are some procedures
15 that have to take place in the Supreme Court on the
16 question of whether somebody should continue to be
17 hospitalized or whether they should be released and under
18 what conditions. And that process has been underway.
19 And Mr. Burgess was represented, as people are in these
20 situations, by Mental Health Legal Services which I think
21 is a state organization that gets appointed to represent
22 the respondent. There's no criminal charges in state
23 court so he's a respondent. Although they also get
24 involved when there's a criminal charge in state court.

25 And also involved in this process is counsel

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1 for Montefiore Hospital as well as the treating physician
2 herself. So affirmations were filed by both and all of
3 this information was presented to a Supreme Court judge
4 in the Bronx.

5 And the upshot of it is that they presented an
6 order to show cause under the mental hygiene law why he
7 should not be placed in what's called assisted outpatient
8 treatment. And so that's a very regimented setup which
9 as explained in the filings is to be used in situations
10 where somebody has been cleared by the treating
11 physicians and the people treating him to no longer be in
12 inpatient treatment because he's been stabilized. That's
13 all reported in affidavits of the MD who's been treating
14 him. But somebody who, due to his mental illness and the
15 risk of decompensation, can't be necessarily relied on by
16 himself without some further measures in place to stay on
17 his medications and to go to treatment.

18 So the result of this is a very detailed
19 treatment plan for AOT, assisted outpatient treatment,
20 was presented to the judge with the endorsement of the
21 physicians, medical personnel, and the counsel for
22 Montefiore Hospital. And then in that process, Mr.
23 Burgess was represented by Mental Health Services. So in
24 the brief time we've had today, my paralegal assistant
25 was able to talk to one of their lawyers. The ones who

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1 actually dealt with this case on the ground were not
2 available but they were able to send us papers as was
3 counsel for the hospital.

4 So the judge ordered that a video conference be
5 ordered for October 12th, which is tomorrow, at 10 a.m.
6 for some sort of hearing on this. And you know, my
7 belief after speaking to various parties including the
8 people who'd would be supervising him if the AOT is
9 ordered is that the expectation is that that will be
10 ordered by the judge. I don't think it's opposed by any
11 of the parties. And if that is ordered, then Mr. Burgess
12 would be under the care and supervision of various people
13 which are listed in paragraph 9 of this filing but they
14 include a -- I'm sorry, I don't know what this acronym is
15 for but it's IMT, and I just got off the phone with them,
16 an IMT program. There's a caseworker for that. They
17 have all the contact information for the director of the
18 program, the social workers. There's a psychiatric
19 treatment medication management aspect of the program.
20 There's random blood screening and urinalysis. And he'd
21 continue under the current medications which include
22 Abilify, Abilify Maintena, Depakote and Cogentin with the
23 option of switching to or adding Risperdal Consta and
24 Invega Sustenna. This is all in the report.

25 And we would submit that under the Bail Reform

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1 Act, especially on the component of danger to the
2 community, if he's allowed to go through this process and
3 be ordered into this treatment regimen, that would
4 provide a reasonable assurance that is not a danger to
5 the community especially given that he's been compliant
6 with his medication while in the hospital. And according
7 to his treating physician who said she'd be willing to
8 testify at least at that hearing, he is currently stable
9 and will remain stable as long as he stays on his
10 medications and goes to the treatment. And this now
11 would be ordered by a state court judge.

12 So I would propose that Mr. Burgess be released
13 with the condition, the bond condition, that he comply
14 with any order under the mental hygiene law or however
15 that would be phrased. Any state court order regarding
16 his treatment and that he would also be on an ankle
17 monitor, location monitoring so that Pretrial could know
18 that he's going to his treatment.

19 The person who we would propose to sign the
20 bond would be my client's father who did speak to
21 Pretrial and I think is a viable suretor. He's not
22 available in person today.

23 So what I would request is that the Court, I've
24 made a copy, take a look at the filing, the order. It's
25 about 20 pages but it's mostly -- some of it is

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1 repetitive and it has affirmations by the physician and
2 by counsel for the hospital. And I'll provide a copy to
3 the government and I would ask for a second call.

4 THE COURT: Mr. Sundaram, your client is
5 raising his hand so I don't know if you want to -- talk
6 to your lawyer first.

7 (Pause in proceedings)

8 MR. SUNDARAM: He just wanted to let you know
9 because that's what I talked to him about after I got
10 these -- I got these just a little bit before I was able
11 to come to court and I reviewed it and he has affirmed
12 that he already has talked about this with his lawyers
13 and with his physician and he was very much willing and
14 interested in doing this.

15 THE COURT: All right. And you said you have
16 not provided a copy to the government?

17 MR. SUNDARAM: I discussed the contents with
18 the government but my understanding is that they're going
19 to oppose --

20 MS. McTAGUE: I can speak to that, your Honor.

21 THE COURT: It was a simple question of whether
22 you received a copy.

23 MR. SUNDARAM: No, no. Yeah, I didn't give
24 them a copy.

25 THE COURT: No. Okay. So Ms. McTague, go

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1 ahead.

2 MS. McTAGUE: Yes, your Honor. You know, I
3 just want to make it clear that this was a sealed
4 complaint that at the time that the mental health order
5 that counsel is discussing, none of the facts or
6 allegations contained in the complaint were public. And
7 so any decisions or orders that were made were absent
8 these new allegations.

9 Now, in their conversation that I had with
10 counsel before this particular proceeding, he indicated
11 that there was a notation in the order that stated that
12 an NYPD officer that was not specified to my knowledge
13 indicated that they had been aware that the defendant was
14 searching for bomb making materials but nowhere in the
15 report was I directed to a place where it had any
16 specific notations as to exact materials that the
17 defendant was looking for as is listed in the complaint,
18 nor any of the threats made to any of the three Jane
19 Does.

20 So the fact is that there was this mental
21 health order that counsel is discussing but that doesn't
22 take into account any of the new charges that the
23 defendant is facing.

24 And so I just would hesitate to let the
25 defendant go based upon an order that very well may not

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1 have been granted had they known of these new charges or
2 these new threats that the defendant was making.

3 THE COURT: All right. So let me just try to
4 unpack what you're all saying.

5 So the government is seeking detention. Let me
6 just start there.

7 MS. McTAGUE: That's correct.

8 THE COURT: On what basis?

9 MS. McTAGUE: On the facts contained in the
10 complaint, the defendant's history of making terroristic
11 threats, I believe that was the initial charge in Nassau
12 County, and it was pled to the aggravated harassment over
13 the phone, threats made over the phone, and the
14 conclusions made by Pretrial Services, your Honor.

15 THE COURT: I'm asking for the legal basis.
16 Under the Bail Reform Act there are specific
17 considerations that need to be taken into account. So
18 can you start there?

19 MS. McTAGUE: Your Honor, I have to say I'm
20 covering this for someone but my understanding is they
21 were relying upon the facts in the complaint and the --

22 THE COURT: I understand the facts in the
23 complaint.

24 MS. McTAGUE: -- and the threats made to the
25 victims.

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1 THE COURT: So which provision? Is this a
2 presumption case?

3 MS. McTAGUE: I'm sorry, your Honor?

4 THE COURT: Is this a presumption case?

5 MS. McTAGUE: I am unaware at this time, your
6 Honor.

7 THE COURT: And is this based on danger to the
8 community?

9 MS. McTAGUE: It is, your Honor.

10 THE COURT: And is it under 3142(f)(1) or
11 (f)(2)?

12 MS. McTAGUE: Just a moment, please.

13 THE COURT: All right. So I mean maybe what we
14 can do is take a break. You can work out what the
15 government's position is, not just the facts, but the
16 legal basis, how I should be analyzing this.

17 And then also, Mr. Sundaram, if you can share
18 the copy of the report with Ms. McTague? I also would
19 like to know more about what this proceeding is because
20 it sounds like it's a proceeding where your client
21 required mental health services and the doctors say he no
22 longer needed to be in the hospital, but if he's in the
23 community he's going to need assistance to stay on his
24 medication and things like that. And this order is to
25 provide him that assistance? The order that may happen

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1 tomorrow? Was that what you're saying?

2 MR. SUNDARAM: That's correct. The order
3 would -- so for assistant outpatient treatment, which is
4 specifically something that is under the mental hygiene
5 law --

6 THE COURT: Right. But that doesn't --

7 MR. SUNDARAM: -- it has to be court ordered.

8 THE COURT: Right. But it doesn't speak to any
9 danger to the community which is a criminal law analysis.
10 So what you're saying is in order to address what the
11 government seems to be saying which is that your client
12 poses a danger to the community, you're saying that this
13 assisted outpatient treatment provides enough structure
14 and assurance so that the community will be protected,
15 the community and the three purported victims in this
16 case would be protected from your client. Is that what
17 you're saying?

18 In other words, the program is meant to create
19 conditions that will assure the safety of the community.

20 MR. SUNDARAM: The program is designed to do
21 that.

22 THE COURT: Well it's not designed to do that.
23 The program is designed to treat the patients, right?
24 Because it's a health issue?

25 MR. SUNDARAM: It's designed to do both because

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1 under the mental hygiene law he could -- these conditions
2 are actually satisfied for him to -- the judge would have
3 to make a finding that he can safely be in the community.
4 And I'll show you what it says here.

5 THE COURT: Can we then back up. Why was he in
6 the hospital in the first place?

7 MR. SUNDARAM: He was hospitalized because of
8 in part because of the conduct that was alleged in this
9 case. Now, they didn't have access to the federal
10 complaint obviously. The shelter apparently itself
11 reported --

12 THE COURT: I see.

13 MR. SUNDARAM: -- that he had received bomb
14 making equipment. So that's what precipitated him. And
15 then there was a suicide attempt reported in September.
16 Those precipitated him being placed at Montefiore for
17 treatment. And then he was treated continuously. And
18 according to the doctor he's now stable and he's
19 stabilized. And they're concerned about him
20 decompensating. And they said to prevent that they're
21 putting this in place.

22 But under the mental hygiene law, one of the
23 things that the Court has to find is that the patient,
24 that assisted outpatient treatment is in order to prevent
25 a relapse or deterioration of his present mental status

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1 which would be likely to result in serious harm to the
2 patient or others under Section 9.01 of the mental
3 hygiene law. I didn't have time to pull that but I will
4 have that prepared for when we reconvene.

5 But essentially they do have a danger
6 component, a danger to himself or others and that
7 includes physical danger. So it's not exactly the same
8 as the Bail Reform Act but there's some overlap.

9 THE COURT: Right. But you're not saying that
10 that court -- what you're trying to say is that the
11 conditions that the Court may impose in that situation
12 may be sufficient to address the danger to the community
13 in this case.

14 MR. SUNDARAM: Yes. And certainly at the
15 minimum what I'm saying is that with those -- and I'm not
16 asking this Court to defer to that court's finding. I'm
17 just saying that that court is making a finding that does
18 address danger under that statute and that the
19 protections that we had placed and the evidence presented
20 by the physician treating him I think should lead to the
21 conclusion along with Pretrial Services monitoring and
22 ankle monitoring that that bond signed by his father
23 would reasonably assure against the danger under the Bail
24 Reform Act.

25 THE COURT: Right. But I don't yet know what

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1 conditions that court -- number one, I don't know if the
2 Court is in fact going to impose those conditions.

3 Number two, I don't know what those conditions
4 are if the Court were to issue an order because the order
5 hasn't been issued yet.

6 Number three, I don't know if in the course of
7 that hearing anyone is going to bring up this federal
8 charge and the facts here because I don't know, as Ms.
9 McTague brought up, it's not clear whether that court, if
10 what you're saying is true, that -- if that court is also
11 looking at danger to the community. Certainly if there
12 are new facts now in the unsealed complaint that the
13 Court needs to know, that may play a role in whether the
14 Court issues the order and if so, for what those
15 conditions are.

16 So at the moment, I am being asked to make a
17 decision in the absence of a lot of information. That's
18 what I'm a little bit unsure about.

19 And I also don't know who's going to
20 participate tomorrow and how that information, the full
21 information will be given to the Court. Your client
22 keeps raising his hand, so I don't know, Mr. Sundaram, if
23 you need to talk to him.

24 MS. McTAGUE: Your Honor, I just have some
25 information to add --

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1 MR. SUNDARAM: I was advised that he just talk
2 to me for the --

3 MS. McTAGUE: -- that I just received. Thank
4 you.

5 (Pause in proceedings)

6 MR. SUNDARAM: Your Honor, in case this wasn't
7 clear to you, my client is also just letting me know that
8 the treatment that's envisioned by the AOT has already
9 been put into place for now.

10 I do understand the Court's questions and I
11 will endeavor to find out. You know, I've been also just
12 doing this under a short time frame and with the goal of
13 preventing him from going to the MDC where I feel like
14 that would be the worst step towards ensuring his
15 decompensation especially with the hearing that's going
16 to happen as early as tomorrow morning. But I will try
17 to find out if the hearing -- I'll try to find out what I
18 can about the likelihood that AOT will be put into place
19 or if it can be put in place and also whether there's
20 some vehicle for getting the additional information in
21 front of the judge and whether the hearing can proceed
22 without him.

23 THE COURT: Or can it proceed from MDC? I know
24 the MDC has video capacity but I don't know whether that
25 counts as a court proceeding that they would be able to

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1 join. Again, Mr. Sundaram, your client's raising his
2 hand.

3 THE DEFENDANT: (Inaudible).

4 THE COURT: You should talk to your lawyer
5 first. I don't want you to address me directly until you
6 check with your lawyer.

7 Ms. McTague, let me hear from you. You said
8 you had information.

9 MS. McTAGUE: Yes. Thank you. I've spoken
10 with one of the case agents and she indicated that the
11 allegations for which the mental health order that
12 counsel is discussing is concerning is regards to an
13 allegation that the defendant made, threats against the
14 shelter that he was staying, and that specifically he was
15 threatening to shoot up the shelter. That is separate
16 and apart from the charges in the new complaint before
17 your Honor.

18 THE COURT: Okay. I mean I don't think whether
19 the court in the health proceeding issues the order or
20 not is going to be dispositive here. I would need to
21 know what the conditions are so that I can make an
22 assessment whether those conditions are sufficient to
23 ensure the safety of the community including the
24 individuals here.

25 And I'll just take a pause here. Do the

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1 victims know this proceeding is happening and did they
2 want to participate or weigh in at all?

3 MS. McTAGUE: They are aware that this is
4 ongoing, your Honor, and I believe my information is that
5 they are willing participants in this.

6 THE COURT: They are willing what?

7 MS. McTAGUE: They're fully participating in
8 this prosecution.

9 THE COURT: Right. But they don't have
10 anything to say about bail?

11 MS. McTAGUE: I mean your Honor, based upon the
12 conduct alleged in the information that I have from the
13 agent beside me that they would like him to be detained
14 as would defendant's brother as in the Pretrial Services
15 report.

16 THE COURT: All right. So Mr. Sundaram, I'm
17 willing to consider what you have. I hesitate to release
18 your client today because I don't know what the
19 conditions are that would otherwise be available to treat
20 him. I'm unclear how the hospital released him knowing
21 that he might still need assistance. So in other words,
22 if he had not been arrested would he have just gone back
23 to the shelter without anybody checking in on his
24 medications? I am --

25 MR. SUNDARAM: Well no, I think that the AOT

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1 was already provisionally in place.

2 THE COURT: It was provisionally in place.

3 MR. SUNDARAM: I can still -- those are things
4 I'll --

5 THE COURT: Okay. So if it's provisionally in
6 place, I would like to know what happens if I release him
7 today.

8 MR. SUNDARAM: Of course.

9 THE COURT: Right? So what is happening
10 between now and the hearing and if the hearing is granted
11 what will happen? If the order issues as a result of the
12 hearing, what happens? And if it's denied, what happens?
13 If it's denied, does he go back to the hospital or is he
14 then free to go about his life without any assistance to
15 address his mental health issues? I'm not familiar with
16 that system. And so I have to then weigh all that
17 information against what has been alleged here and what
18 the government is arguing and what they will provide more
19 information on as well. So do you think you can get that
20 information between now and 5 o'clock or --

21 MR. SUNDARAM: Yes.

22 THE COURT: All right. So --

23 MR. SUNDARAM: I do because we've been in touch
24 with some of the lawyers but some of that happened while
25 I was here.

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1 THE COURT: Okay. So why don't we put this
2 down for a second call so that both sides can prepare.
3 In the meantime, if you can provide a copy of the papers
4 that you want the Court to consider to the AUSA and then
5 also give a copy to me, I'll take a look at it as well.
6 So we'll say about a half hour but if you're ready before
7 then, let me know. And if you need a little more time
8 also let Michelle know. All right?

9 MR. SUNDARAM: So you're looking at 4 o'clock?

10 THE COURT: Around 4 o'clock.

11 (Off the record)

12 THE CLERK: Okay. So we have a second call for
13 22-mj-1047, *United States v. Darnell Burgess*.

14 Counsel, state your appearances please starting
15 with the government.

16 MS. McTAGUE: Good afternoon again. Kaitlin
17 McTague for the government.

18 MR. SUNDARAM: Kannan Sundaram, Federal
19 Defenders for Mr. Burgess accompanied by Mia Halsey, a
20 social work intern.

21 THE COURT: All right.

22 MR. SUNDARAM: Your Honor, in the courtroom as
23 well is Danielle Azzarelli. She's one of our social
24 workers.

25 THE COURT: Okay. So I have reviewed this

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1 order to show cause with regard to the proceeding in
2 state court under the mental hygiene law. Let me hear
3 from the government if they have any further argument to
4 make on this point.

5 MS. McTAGUE: Yes, your Honor. First, just
6 taking a step back, the government is seeking detention
7 primarily based upon the dangerousness of the defendant
8 not only to the identified individuals in the complaint,
9 Jane Does 1, 2, and 3, all of whom I believe are known to
10 the defendant. And he specifically made threats to them
11 because of prior interactions with them. But also to the
12 community at large.

13 Now, as you can see in the complaint, your
14 Honor, there's not only screenshots of the specific
15 complaints, excuse me, specific threats that the
16 defendant made to individuals but also there are
17 photographs of the items that the defendant purchased on
18 Amazon and other internet retailers which are items and
19 materials used to make a bomb.

20 In addition to that, as specified in the
21 complaint, your Honor, the defendant has looked up in his
22 internet search history how to make a bomb, murder
23 charges in New York State, what do they use to make a
24 barrel gun, major components of a firearm. This is in
25 section paragraph 6, your Honor. Bulletproof cars,

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1 police killings in New York, Ted Bundy, thermobaric bombs
2 versus nuclear bombs, and where can I buy potassium
3 nitrate in New York? And there are photographs of the
4 purchases the defendant made.

5 So the people are seeking detention not only as
6 to the defendant's dangerousness to these specific
7 individuals who are known to the government, but also to
8 the community at large because obviously these materials
9 are harmful to any multitude of people in the community.

10 Additionally, your Honor, as indicated in the
11 Pretrial Services report and as discussed in the earlier
12 proceeding today, the defendant doesn't have a central
13 home location. He's been transient in different shelters
14 of which he has been kicked out of including the Atlantic
15 Avenue Shelter. And I believe he is in the Jerome Avenue
16 Men's Shelter now for which he's made threats to
17 individuals there and for which he was placed into this
18 treatment facility for which the mental health order is
19 regarding.

20 To continue, your Honor, the defendant has most
21 recent to -- excuse me, beginning in April of 2022
22 throughout April and May the defendant was making threats
23 against other people in the shelter in which he was
24 staying. He said he would shoot and kill others and
25 himself. He threatened the director who filed aggravated

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1 harassment charges which were, my information is, dropped
2 down just to a harassment complaint. But that is what
3 dropped the defendant from the Atlantic Avenue Shelter.

4 The defendant was then hospitalized for a
5 period of time. He was remanded. Excuse me. Probation
6 violated him because he didn't abide by the mental health
7 treatment conditions of his probation.

8 He was released in May of 2022 and at that time
9 is when the defendant entered the Jerome Avenue Men's
10 Shelter. Between July and August the defendant was in
11 the Montefiore Hospital for mental health treatment. And
12 in August of this year is when he made the threats to
13 Jane Doe.

14 So the defendant has been in and out of mental
15 health treatment, shelters, custodies, and yet he
16 continues to make threats. So that goes to the
17 dangerousness.

18 Now, as to the defendant's risk of flight, he
19 is not employed. He does not have a stable home. He may
20 or may not be accepted back into a shelter given the
21 various threats that he has made to people who work in
22 the shelter. So those are the bases that the government
23 is seeking detention.

24 Your Honor, I'm going to renew than the
25 argument that I made earlier as to just the ambiguity as

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1 to whether or not the mental health order would have been
2 granted had these facts in the new complaint been
3 considered. That's where I'll rest my argument.

4 THE COURT: The complaint in the state court,
5 or rather the issues in the show cause order reference
6 the threats, not the ones made to the specific Jane Does,
7 but the threats and also making the bomb, the bomb
8 materials.

9 MS. McTAGUE: Your Honor, if I may, just based
10 upon information I'm receiving from the agent, the
11 references to the bomb materials contained in the state
12 court paperwork is as to threats he made against the
13 Atlantic Avenue shelter, not the new threats against the
14 Jerome Avenue shelter.

15 THE COURT: But since the proceeding below is
16 not a criminal court proceeding, I'm not sure why that
17 would make a difference. The proceeding under the mental
18 health law is about the treatment of this particular
19 individual and the safety to the community so that
20 treatment for him for his own good and also to ensure the
21 safety of the community because it seems like if he's
22 taking his medications, then there isn't a threat. And
23 so I'm not sure knowing that he made threats to other
24 individuals outside the shelter it's really that issue.
25 It's really about his compliance with the medication as I

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1 read it. But I'm still not sure, Mr. Sundaram perhaps
2 you can address this, what the evaluation or what the
3 analysis was that made the hospital release Mr. Burgess
4 given that they have all these concerns about his
5 compliance. I don't understand how things operate at the
6 state level.

7 MR. SUNDARAM: So since we were here earlier, I
8 did speak to one of the lawyers who is a party to this
9 litigation, the one who filed the order to show cause. I
10 also spoke to an IMT person who is with cases which is
11 referenced in the paperwork. They would be dealing with
12 Mr. Burgess and helping coordinate all of the services in
13 the event he gets released. And then the AOT is ordered.

14 So from talking to the lawyer, and this is also
15 something I've encountered before is that under I think
16 Kendra's Law the civil commitment standard is what
17 governs if the person is involuntarily hospitalized. And
18 so based on the progress during his hospitalization,
19 which I think has now been over two weeks or about two
20 weeks, since September 23rd, the medication, the therapy,
21 the treatment by the physician, it was determined that he
22 would not be, cannot be held at the hospital
23 involuntarily in his current state and so because he's
24 currently not a danger, at least under the civil standard
25 to himself or anyone else.

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1 THE COURT: Right. So let me just stop you
2 there. So because there's medication that will address
3 your client's behavior, the hospital determined as long
4 as he's on the medication he can safely be in the
5 community and should not be civilly committed against his
6 will. Is that the analysis?

7 MR. SUNDARAM: Yes. It's because he was under
8 medication for a period of time and observation and
9 analysis and treatment as well. And so where the AOT
10 comes in is that they can either leave people and release
11 them and then hope for the best and tell them you should
12 be doing this and this. Or if the court orders
13 additional levels of treatment that he's required to
14 follow, which is what happened here, then that provides
15 some additional measure that is designed to prevent
16 decompensation. And I think he could have litigated
17 this. Like his mental health lawyers could have fought
18 against this and said we don't want an AOT to be ordered
19 by a court. But they didn't. Because he consulted with
20 them and he decided with their advice that he wants this.
21 And this wasn't in place previously.

22 He has been in and out of mental health
23 treatment, that's true, with cases. But he hasn't been
24 under an AOT that was ordered by the court with all of
25 these services in place. So that's what would be ordered

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1 tomorrow.

2 And the lawyer also told me that since it's on
3 consent, since the AOT order is on consent of the parties
4 meaning the hospital lawyers who filed it and Mental
5 Health Legal Services, his lawyers, he expects that it
6 will be signed. But it won't be in place officially
7 until the court orders it unless that happens which would
8 be hopefully tomorrow.

9 The lawyer explained that you can start
10 receiving the services while the AOT is pending. That's
11 why he was already eligible for the services.

12 THE COURT: And are you saying that the alleged
13 criminal conduct here was the result of your client's
14 mental health challenges?

15 MR. SUNDARAM: I mean at this point, you know,
16 given the criminal case and the pending charges, all I
17 would say is that certainly seems to be the doctor's
18 conclusion that he was in a decompensated state at the
19 time of the alleged conduct and that he isn't anymore and
20 that that's why he's not -- that's why he shouldn't be
21 involuntarily hospitalized. And that's why he can be
22 safely in the community, safely with respect to other
23 people and himself if he is under medication and
24 receiving his other services.

25 And I think they also mentioned the cannabis

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1 problem.

2 THE COURT: Okay. And so what is your proposal
3 in terms of where your client will live? Who will be
4 making sure he shows up to court? The medical report in
5 the state proceeding says he reported no next of kin who
6 can help out, no place to live. What's the plan there?

7 MR. SUNDARAM: Well, if he were released at
8 this point, like right now, I think Ms. Azzarelli can
9 speak to this, but I think he would then have to go to a
10 central shelter and then they would figure out which
11 shelter is his assigned shelter. Currently his assigned
12 shelter is apparently the Jerome Avenue shelter. So DHS
13 assigns a shelter and they're required to do that. So
14 he's entitled to a shelter. But because he hasn't been
15 at one for a period of time, he wouldn't be able to go
16 straight back to the last one. He would first have to be
17 released -- Ms. Azzarelli can address this.

18 MS. AZZARELLI: I'm sorry, Judge. I'm Danielle
19 Azzarelli, social worker.

20 Mr. Sundaram is correct in that he would go to
21 the central intake filter in Manhattan, 30th Street men's
22 shelter on First Avenue in Manhattan right by Bellevue
23 Hospital. And at that point he can go and speak to an
24 intake counselor. They'd pull up his file. They'd see
25 that he has a shelter history and can explain to staff

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1 there that while the Jerome Avenue shelter is a shelter
2 of record, he is not permitted to return to that
3 residence. And then they would find him another suitable
4 residence. New Yorkers with or without citizenship
5 status, anybody has a right to shelter in the city and
6 they cannot turn him away if he were to go to the intake
7 shelter today.

8 THE COURT: And they couldn't turn him away
9 even if they found out he had a history of making threats
10 to prior shelters?

11 MS. AZZARELLI: They would have to accommodate
12 his situation because of I believe it's Callahan, the
13 state law that gives the right to shelter the city. They
14 would have to accommodate and find him eligible for
15 shelter is my understanding.

16 MR. SUNDARAM: Your Honor, that was also
17 confirmed by the lawyer I spoke to who deals with these
18 cases and as well as the caseworker at cases who would be
19 on his IMT team is that he will be placed somewhere. He
20 has to be under the law even -- and by the way, the IMT
21 person confirm that they were aware of the allegations
22 against the shelter at the time that he was taken to the
23 hospital. So the people who treated him were aware of
24 that.

25 THE COURT: So let me ask how often does Mr.

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1 Burgess have to take his medication in order to have
2 everything under control?

3 MR. SUNDARAM: So either it has to be every day
4 orally with the pill or a monthly injection and as of
5 late it's been orally.

6 THE COURT: Okay. But if he misses a day then
7 there's a risk that he's going to act up. Right?

8 MR. SUNDARAM: I mean it's not my -- I'm not a
9 doctor. My understanding is that if he is then taking it
10 for a period of time he would have to miss it more than
11 once before -- I think it's more gradual.

12 THE COURT: Right. So is there any way to have
13 this newer information about threats to specific
14 individuals, not just to the shelter, relayed to the
15 people in the state proceeding to see if they still think
16 that their plan is a good one and will moderate Mr.
17 Burgess's behavior in a way that protects specific
18 individuals who have been targeted as opposed to sort of
19 general threatening behavior?

20 MR. SUNDARAM: So that's something I'm not
21 entirely clear about. But from talking to the lawyer
22 about the law that governs these things, I don't believe
23 that that information would come into play in this AOT
24 order because it's primarily based on the fact that he's
25 currently stable and will remain stable. And I think

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1 that -- I believe that the only way these current
2 allegations would lead him to go -- I can't say this for
3 100 percent but I don't believe they would enter into the
4 current equation. I think that if he were -- if these
5 were brought to light even back before he was
6 hospitalized, and these allegations appear to be from
7 June, July, and August, which was six weeks before he was
8 hospitalized, if those things had been brought to light
9 then I think we'd be in the same place we are now because
10 he would have just been treated. I mean if you compare
11 the allegations of ordering explosives to make a bomb and
12 threatening to blow up a shelter, I don't think that this
13 would appreciably change any of that.

14 I would also note that the government is citing
15 all of these things in the complaint. All of them appear
16 to be threats on their face, threats. None of them were
17 acted upon and months passed. And NYPD went and talked
18 to him. That's what he reported. That they left a slip
19 of paper with a phone number to call the DHS person, gave
20 it to him. He called. He thinks that was sometime after
21 April but he doesn't remember when. And then when he was
22 I think at the Jerome Avenue shelter, the police went to
23 the hospital where he was hospitalized before Montefiore
24 and try to talk to him there. So you know, he was aware
25 that law enforcement was being made aware of these

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1 allegations, at least some of them. And he doesn't have
2 any (indiscernible). He just stays in this shelter
3 system and goes to the next shelter. So it's easy to
4 track him. I mean he hasn't been living on the street at
5 all through this entire time. He's been in the shelter
6 system.

7 THE COURT: Okay. And let me ask the
8 government you talked about ordering the bomb making
9 materials, you talked about communications by electronic
10 means, making the threats?

11 MS. McTAGUE: Yes, your Honor. Facebook
12 Messenger.

13 THE COURT: Right. And then you talked about
14 looking up certain things again electronically how to
15 make a bomb, those kinds of things?

16 MS. McTAGUE: Yes. And if your Honor looks
17 beginning in paragraph 3 and onto page 4, there are
18 actually items and materials that the defendant
19 successfully ordered.

20 THE COURT: Right. But you don't have
21 information that he assembled the bomb, right? He
22 ordered the materials. And you don't have information
23 that he tried to approach the individuals he was
24 threatening.

25 MS. McTAGUE: The only information that I have

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1 before me in the complaint, your Honor, is that the
2 defendant was ordering the materials in order to
3 therefore create a bomb.

4 Your Honor, if I may just add something? The
5 defendant has been in custody since September 22nd and it
6 appears as though his stability is because he was
7 hospitalized since that time. When the defendant, based
8 upon the timeline that I have been provided, when the
9 defendant is not under a strict -- when the defendant is
10 not basically being held and given his medications,
11 that's when he goes off of it. So your Honor, the
12 information that I have is that he was violated on
13 probation and remanded because he didn't abide by
14 specific mental health components and that was in May of
15 2022. So the defendant is stable now because he was just
16 hospitalized. So he was being held and being supervised
17 when he was given his medication.

18 The defendant's history shows that when left to
19 his own devices he doesn't take his medication and then
20 this conduct persists.

21 THE COURT: But the order below, the order to
22 show cause, and if the IMT plan I guess is what it's
23 called, or the AOT plan is ordered, then there would be a
24 healthcare professional who it sounds like would be
25 making sure that he does take his medications. Right?

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1 MS. McTAGUE: That was part of his probation
2 that he initially violated. So all I'm looking at is the
3 defendant's history of wavering back and forth between
4 taking his medications and not.

5 THE COURT: I understand that.

6 MS. McTAGUE: And when he's in a, for lack of a
7 better word, like contained environment, whether if he's
8 held in a hospital or incarcerated and can be
9 administered his medication on a regimented basis, that
10 is when it is most likely to be successful.

11 THE COURT: And what mental health treatment
12 will Mr. Burgess get at MDC?

13 MS. McTAGUE: I can't speak to that, your
14 Honor.

15 THE COURT: Probably none.

16 MS. McTAGUE: I don't know.

17 THE COURT: But I'm going to say safely --

18 MS. McTAGUE: I understand, your Honor.

19 THE COURT: -- that he will not get any
20 treatment there.

21 MS. McTAGUE: I understand.

22 THE COURT: And when he doesn't get treatment
23 is when he acts up. You know, this is the challenge. I
24 mean the healthcare professionals at the hospital made
25 the assessment that with the medications Mr. Burgess can

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1 safely be in the community but they did express this
2 concern that he has a history of noncompliance. And so
3 the plan that is being proposed to be put in place is
4 some kind of plan to make sure that Mr. Burgess is taking
5 his medication and is compliant, and it's for a year.

6 I don't know what that consists of so I don't
7 know if somebody's going to check in with him every day
8 to make sure he's taking his medication. I don't know
9 whether he's going to consent to the monthly injection so
10 that he doesn't have to take the medication every day.

11 So I understand that the healthcare folks feel
12 comfortable with this but I don't know enough about what
13 is happening, so it's a little bit hard for me to impose
14 conditions of his release. So hold on, Mr. Burgess. I
15 see you but let me finish.

16 So I don't think I can say -- I mean I can
17 either separately impose the condition that he take his
18 medication every day, you know, report to Pretrial
19 Services every day, for example, and take the medication
20 in front of them so they know he's taking his medication.
21 I suppose I could do that. But I don't know if that's
22 workable. And I don't know that I can order a healthcare
23 professional to ensure that he's taking his medication.

24 So if the order is -- and then I also have no
25 control over the order, right? Because even if the Court

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1 orders that this AOT plan be put in place, a month from
2 now they might decide that it's not workable and they
3 resend it and then I suppose at that point Pretrial
4 Services will come back and tell me that that safety net
5 is no longer available and what are we going to do about
6 it?

7 So there are just a lot of variables that give
8 me concern. On the other hand, there's MDC. So you
9 know, this is my dilemma.

10 Mr. Sundaram, your client wants to talk.

11 (Pause in proceedings)

12 MR. SUNDARAM: Your Honor, I'm going to share
13 with you to you what Mr. Burgess told me which I think is
14 somewhat helpful. But also I wanted to say that the
15 lawyers (inaudible) also told me that the service, the
16 level of service provided under this plan is what he
17 called among the highest level of services that is
18 available. Not the very highest level but it's among the
19 highest level. And also that it does call upon his
20 intensive mobile treatment, the IMT people, to check on
21 him. I don't know the frequency is every day. I'm sure
22 it's more than once a week though that they will check on
23 him and they will ensure that he takes his medications
24 and also keeps his appointments. That's also
25 important -- he said that's why they're called the

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1 intensive mobile team, they literally follow him around.
2 And they also have the authority to order him back to the
3 hospital, meaning to contact the NYPD if he's not
4 complying and then ordering him back to the hospital. So
5 I think there is a mechanism there and also something
6 that would give him an incentive to comply because he
7 doesn't want to be in the hospital and he doesn't want to
8 feel the way he feels when he's off his medication.

9 And one of the things he told me about, there
10 is mention here about what calibration level. So he said
11 that's one of the ways they can keep track of whether
12 he's on the right amount of medication.

13 THE COURT: All right.

14 MR. SUNDARAM: I also think I'm confident that
15 he -- and I think Ms. Azzarelli can probably vouch to
16 this, that these programs or cases, they will keep in
17 touch with Pretrial and let them know so you don't have
18 to rely only on Pretrial.

19 THE COURT: Let me hear from Pretrial Services
20 on whether you --

21 MR. SUNDARAM: We also have our social worker.

22 THE COURT: Yes.

23 MR. SUNDARAM: (Inaudible).

24 THE COURT: Right.

25 MR. SUNDARAM: It's in all of our interests

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1 that this works.

2 THE COURT: So I'd like to hear from Pretrial
3 Services to see have you had to interact with these IMT
4 programs before and how effectively can you coordinate
5 any supervision?

6 OFFICER CARTER: Your Honor, Bianca Carter with
7 Pretrial Services. I personally haven't dealt with this
8 program. I've asked the supervisor to walk over.

9 With anything, your Honor, there's always
10 challenges. We're not a 24 hour, you know, agency.
11 We're only open Monday through Friday. We are on call on
12 the weekends but we do not do home visits or we're not
13 REACT teams. So we are at the behest of the type of
14 programming that Mr. Sundaram is referring to as far as
15 ensuring that the defendant is taking his medication and
16 so forth.

17 I know your Honor noted he could take the
18 medication at our office, but at the end of the day we're
19 not a medical facility, so there's always tricks and
20 trades of swallowing the medication but actually cheeking
21 it and so forth. And like a methadone clinic, we're not
22 open on Saturday and Sunday, so we couldn't ensure that.
23 But if your Honor wants to speak to one of our
24 supervisors who specializes in mental health treatment, I
25 can have him come to court.

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1 THE COURT: All right. Okay. Well I think
2 what makes sense to me, I would not impose on Pretrial
3 Services the burden of ensuring the health of this
4 defendant. I think that is too much. And so a necessary
5 component of any release would be that this IMT program
6 be in place. And so, you know, and then Pretrial
7 Services would piggy back on that so that they can report
8 to you how he's doing. And if you in your supervision of
9 the defendant find that he has not been compliant with
10 the conditions that I can impose, then there would be a
11 reason to come back and revisit any release. But there
12 is this kind of uncertainty about whether the Court will
13 impose this or not. But the good news I guess is that
14 the hearing's tomorrow. So what I think makes sense --
15 are there any proposed suretors?

16 MR. SUNDARAM: As reported in the Pretrial
17 Services report, I think his father, who our paralegal
18 spoke to earlier today, did indicate that he would be
19 willing to sign the bond but he wasn't available today.
20 At this point I don't know, maybe we can get him on the
21 phone. We can try.

22 THE COURT: Right. Okay. And what kind of
23 work does he do, the father?

24 MR. SUNDARAM: He is a security guard
25 (inaudible) and an electronic technician. Between those

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1 two things it sounds like he makes \$75,000 a year.

2 THE COURT: I see. Okay. Hold on. There's
3 somebody here from Pretrial Services.

4 MS. McTAGUE: No.

5 THE COURT: No? Oh.

6 MS. McTAGUE: Excuse me, your Honor, I'm sorry,
7 the Pretrial Services report says it's a combined yearly
8 earning of 35,000 to 40,000.

9 MR. SUNDARAM: I misread it then.

10 THE COURT: Okay. That's fine.

11 MR. SUNDARAM: And your Honor, also Mr. Burgess
12 did tell me just now that he would have no -- you know,
13 this is his choice, that he would have no problem if it's
14 available to him to take a monthly injection of his
15 medication.

16 THE COURT: Okay.

17 MR. SUNDARAM: So that's something we can
18 verify through documentation that he took it.

19 THE COURT: Right. Okay.

20 MR. SUNDARAM: (Inaudible).

21 THE COURT: All right.

22 MS. McTAGUE: Your Honor, not to belabor a
23 point, I just had information provided to me.
24 Unfortunately, I don't have the specifics, but
25 information that I have is that when the defendant was in

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1 the Jerome Avenue shelter, excuse me, the Atlantic Avenue
2 shelter, an IMT was in place and he evaded that.

3 THE COURT: Oh. Okay.

4 MS. McTAGUE: And that was part of what put in
5 motion him leaving that facility.

6 THE COURT: But how is it that they are
7 proposing, the state is proposing an IMT again? Surely
8 they would know that.

9 MS. McTAGUE: I don't know, your Honor. I'm
10 sorry.

11 MR. SUNDARAM: The assistant outpatient
12 treatment was not ordered. He did have a caseworker.
13 He's had cases, a cases caseworker over the years. And I
14 think it's spelled out in the paper in the file that, you
15 know, we're having a court order something that's very
16 specific, it's a high level of treatment. But yes, he
17 has had a caseworker.

18 THE COURT: It was an IMT, not an AOT.

19 MR. SUNDARAM: Right. An IMT is the component.

20 THE COURT: Right. That's what I mean.

21 MR. SUNDARAM: One of the components.

22 THE COURT: And it was not ordered by the
23 court.

24 MS. McTAGUE: I have a clarification. The IMT
25 was not -- it was part of his probation and that's why he

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1 was violated because he was evading IMT as it was linked
2 to his probation.

3 THE COURT: I see. All right. So did Pretrial
4 want to be heard? You're here, so I just wanted to see
5 if you wanted to add anything or did you have any
6 questions?

7 PRETRIAL OFFICER: Nothing right now, your
8 Honor.

9 THE COURT: No?

10 PRETRIAL OFFICER: We don't have any experience
11 with an IMT or AOT.

12 THE COURT: I see.

13 OFFICER MANGANARO: So I don't know if I can
14 add anything.

15 THE COURT: Okay. That's fine. Can you just
16 state your name on the record?

17 OFFICER MANGANARO: It's Brian Manganaro from
18 Pretrial.

19 THE COURT: Okay. All right. Great. Thank
20 you.

21 So what I think makes sense is given that the
22 mental health professionals are saying that as long as
23 Mr. Burgess takes his medication he can control his
24 behavior and given that the behavior in this case
25 constitutes threats and ordering of bomb materials, which

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1 is one step removed from causing a clear and present
2 danger to individuals weighing the potential
3 dangerousness to the community under these circumstances,
4 I am willing to allow Mr. Burgess to be released but on
5 condition that he abide by the AOT that may be imposed by
6 the court as a result of the hearing tomorrow.

7 If it is not impose tomorrow, then he needs to
8 come back and we need to have this conversation again.
9 All right? But I will release him because I think one
10 day and also for him to be able to participate in this
11 hearing and making sure that he's taken his medication
12 today and is at least compliant for this 24 hour gap. I
13 think I can release him under those circumstances. I'll
14 impose a \$30,000 bond that his father or some other
15 suretor needs to sign, and I'm going to ask for -- Mr.
16 Burgess is not working, right?

17 MR. SUNDARAM: Not working.

18 THE COURT: So is he likely to find a job?

19 MR. SUNDARAM: I think he's indicated that he
20 would be interested in finding work but he doesn't have a
21 job.

22 THE COURT: Okay. And then, you know, if his
23 residence is going to be a shelter, I'm just trying to
24 think whether curfew or --

25 THE DEFENDANT: There is a curfew, 11 o'clock,

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1 ma'am.

2 THE COURT: Okay.

3 OFFICER MANGANARO: So there are some
4 limitations here with shelters.

5 THE COURT: Yes, that's what I wanted to know.

6 OFFICER MANGANARO: (Indiscernible). Most
7 shelters don't allow for them to have location monitoring
8 equipment because there's lack of areas to plug the
9 equipment in and things like that.

10 THE COURT: I see.

11 OFFICER MANGANARO: So there's certainly some
12 barriers here particularly not knowing which shelter he's
13 going into tonight. You know, I don't know if we can
14 confirm anything. But there are certain barriers.

15 THE COURT: Right. So how would you supervise
16 somebody in a shelter?

17 OFFICER MANGANARO: So with location
18 monitoring, it's pretty difficult.

19 THE COURT: Yes.

20 OFFICER MANGANARO: You know, under general
21 supervision you certainly just count on them residing
22 there until they've found something better. But with the
23 location monitoring condition, if there was a curfew, we
24 might not be able to confirm that he's there.

25 THE COURT: Yes. So that's going to be another

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1 problem, Mr. Sundaram.

2 MR. SUNDARAM: Your Honor, I've heard of this
3 before but at the same time our office has had clients in
4 shelters who were on the monitor. So I don't think
5 (inaudible).

6 THE COURT: All right. And you told the Court
7 that your client's history is not of leaving shelters.

8 MR. SUNDARAM: Correct.

9 THE COURT: It's of going from shelter to
10 shelter. And the danger that the government has
11 presented is the ordering of materials to make a bomb and
12 making threats via remote means. I mean my fear is that
13 your client will show up at the doorstep of one of these
14 individuals. And so how do we guard against that? I can
15 order that he stay away from them for sure but I don't
16 know that we have a way to monitor it. So that is
17 another level of concern.

18 MS. McTAGUE: But I would note that there's no
19 allegation that he's ever done such a thing. And he had
20 the ability to do so for several months.

21 THE COURT: Yes.

22 OFFICER MANGANARO: Based on the seriousness of
23 the charges, I'd highly recommend that at least we have
24 some sort of confirmation of where is it he's going to
25 go, some sort of confirmation that we are going to be

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1 able to have location monitoring equipment placed there
2 at least in the time being until something more permanent
3 can be arranged for him. With not those things in place,
4 we certainly have our concerns about the seriousness.

5 THE COURT: Yes. And are there shelters where
6 location monitoring could be used.

7 OFFICER MANGANARO: Well we've certainly had
8 experience with shelters that do accommodate such
9 requests. You know, again, not knowing where that place
10 is, it's going to be hard to confirm that right now.

11 THE COURT: So that would have to be one of the
12 conditions that wherever he is placed shelter wise will
13 allow there to be location monitoring.

14 OFFICER MANGANARO: Especially if there's a
15 curfew or a home detention provision where --

16 THE COURT: Exactly.

17 OFFICER MANGANARO: -- you know, we'd be able
18 to monitor that he is where he's supposed to be.

19 THE COURT: Right. Okay.

20 MR. SUNDARAM: Your Honor, I think if I
21 understand correctly, the concern that we're talking
22 about is to be able to monitor his whereabouts with the
23 location monitoring. So we have had -- there are
24 shelters that will allow that. However, all the
25 shelters -- the shelters don't allow their residents to

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1 stay in the shelter all the time. So they make them
2 leave and then they have to be back by the curfew time.
3 So we would hope that it would be location monitoring but
4 with a curfew or just whatever the shelter imposes and
5 not confinement in the shelter at all times.

6 THE COURT: Right. So I understand that home
7 detention would not work but then there would have to be
8 an agreement as to where he's going when he's not allowed
9 to be in the shelter itself. And I'd don't know if you
10 have any thoughts on where he can go when he's not in the
11 shelter other than wandering around the streets.

12 MR. SUNDARAM: Just to clarify. They're not
13 required to leave the physical vicinity of the shelter.
14 They just can't stay in their dorm, in their room.

15 THE COURT: Okay.

16 MR. SUNDARAM: So there would be outdoor space
17 or common areas where they can go. And in his case, I
18 think he will have numerous appointments that he has to
19 have, you know, probably several times a week to comply
20 with the AOT.

21 THE COURT: Okay. So I think we can make that
22 work to have him have location -- he has to be in a
23 shelter where he can have location monitoring because I'm
24 going to impose location monitoring as a condition. So
25 if we can't make that work, then he can't be released.

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1 All right? I mean I'll release him and I'll give a
2 period of time for all of these things to be worked out.
3 And does it make sense to have a curfew or just leave the
4 location restrictions up to Pretrial Services?

5 OFFICER MANGANARO: So the issue with the
6 curfew is technically between the hours that he's allowed
7 out he could essentially go wherever he wants. There
8 would be no restrictions on the location other than his
9 general travel restrictions. You know, with more
10 specific direction like a home detention condition, he
11 would certainly be allowed out for any verified
12 appointments that he'd have to go to. But other than
13 that, he'd be expected I guess to stay on the grounds of
14 the shelter.

15 THE COURT: Right. Okay. So I think actually
16 that makes sense because then the medical appointments
17 and things like that wouldn't need to be confirmed with
18 Pretrial Services. If there are specific times he's
19 meeting with doctors or other healthcare professionals as
20 part of the AOT or whatever else it is, that schedule
21 needs to be given to Pretrial Services so they can
22 confirm that that's where he's going. And other times he
23 needs to stay within the shelter and hopefully it's a
24 situation where the shelter allows people to stay within
25 the shelter even if it's not in his particular room.

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1 Right? So you need to find a situation that permits that
2 to happen and still allows him to go get the treatment
3 that he needs because the treatment will also be part of
4 one of his conditions. So let me just see if I can write
5 this out so it makes sense.

6 So the AOT is assisted outpatient treatment
7 plan. Right? And there are a lot of contingencies here,
8 Mr. Sundaram and given what you're telling me is a high
9 probability that these things will happen, I will allow
10 Mr. Burgess to be released today but he must comply with
11 all of these things in a short period of time. So if I
12 say by the end of this week, so I'll say by Friday he
13 needs to have worked all of these things out because if
14 by Friday there is no assisted outpatient treatment plan
15 in place or he's not in a shelter that allows him to have
16 location monitoring, or the shelter has such restrictive
17 conditions that he's not allowed to stay on the grounds
18 during the day, or his father refuses to come in and act
19 as a suretor, then his conditions -- then it's not in
20 compliance with the release order that I'm signing and
21 then he needs to be brought back, your client needs to be
22 brought back in so we can reevaluate what's going to
23 happen.

24 MR. SUNDARAM: Well, I'll actually be on
25 arraignment duty again on Thursday.

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1 THE COURT: I'm sorry?

2 MR. SUNDARAM: I'll be on arraignment duty
3 again this Thursday.

4 THE COURT: All right.

5 MR. SUNDARAM: So I'll do everything I can to
6 see if we can get those things in place. I'll be here to
7 report to the Court.

8 THE COURT: Thursday would be even better
9 but --

10 MR. SUNDARAM: But I mean I'd like if you gave
11 us to Friday --

12 THE COURT: Okay,

13 MR. SUNDARAM: -- just because it might take a
14 little longer time.

15 THE COURT: Okay. So then I'll order you to
16 file a report with the Court or be here with your client
17 to tell me what's going on. And if everything is going
18 great, then he can stay on release. But if there are
19 problems with any of these issues, then we need to figure
20 this out and think some more about what's going to
21 happen. Okay. Because I do think these are serious
22 allegations but I think that we can craft these release
23 conditions with the assistance of the health
24 professionals who hopefully will be available to make
25 this happen. But if they're not available to make this

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1 happen or if the shelter system is not providing what
2 they need to, their component to make this happen, then I
3 will have concerns about whether these are adequate
4 conditions to ensure the safety of the community and
5 these victims.

6 MR. SUNDARAM: I guess one condition I would
7 ask the Court to consider holding off pending his
8 placement in a shelter is the home detention condition
9 because I think that if you order that he not go anywhere
10 near where any of the Jane Does in the complaint live, I
11 think a curfew as set by Pretrial I think would be much
12 better in terms of allowing him to go through all of the
13 different treatments because otherwise he has to keep
14 making requests every time. And I think sometimes that
15 becomes difficult because they need a certain amount of
16 notice and I don't know if he's going to have the same
17 schedule every week. And I don't see any reason to say
18 he can't go anywhere. We can just confine him to New
19 York City and with a curfew set by Pretrial.

20 THE COURT: Well, these are things I would like
21 to know by Thursday what is happening.

22 MR. SUNDARAM: Okay.

23 THE COURT: Yes?

24 OFFICER CARTER: Your Honor, I just want to
25 clarify.

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1 THE COURT: Okay.

2 OFFICER CARTER: Pretrial Services understands
3 counsel's statement but we would like still home
4 detention at least until Friday so that we can see if the
5 defendant even is going to comply with the bare minimum
6 of conditions. We don't want to reward big behavior
7 especially when we're recommending detention at this
8 time.

9 THE COURT: Right.

10 OFFICER CARTER: Right off the gate, these are
11 serious allegations and we would like a short leash so to
12 speak rather than giving him a lot of rope to get himself
13 into trouble. So if your Honor wants to change his
14 conditions as far as a curfew instead of home detention
15 on Friday, that is definitely your right. We would just
16 personally ask at least for your Honor to reconsider on
17 Friday once everything is put into motion so that we can
18 assure that everything is good.

19 THE COURT: Okay. And I guess how would I
20 phrase that if it's not clear that he is a shelter where
21 he can have the location monitoring?

22 OFFICER CARTER: You can still place home
23 detention, your Honor.

24 THE COURT: That's true. But you just can't
25 check on it.

Proceedings

1 OFFICER CARTER: However, on Friday or when
2 your Honor sees the defendant again, you can modify the
3 bail conditions --

4 THE COURT: I see.

5 OFFICER CARTER: -- to a curfew if you see fit.

6 THE COURT: Okay. All right. So let's do
7 that. So the condition will be home detention and the
8 home will be the shelter that he's being placed in. And
9 the shelter needs to allow location monitoring. The
10 location monitoring, it's not going to happen right away
11 but it's going to happen as soon as Pretrial Services --

12 OFFICER CARTER: I will place the bracelet on
13 today, your Honor.

14 THE COURT: Oh, today. Okay. So there you go.
15 Okay. So we can do that. All right. Is that clear?

16 So all of these things need to happen and I
17 would like to see you on Thursday just to make sure
18 everything is in place. And that will give me assurance.
19 I'll be on duty on Thursday afternoon starting in the
20 afternoon. So we can schedule something. Should we do
21 that? Say 2 o'clock on Thursday? You said you were
22 on -- no?

23 MR. SUNDARAM: Yes, that's fine. Yes, I'll
24 report to --

25 THE COURT: But you're not on duty on Friday,

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1 Mr. Sundaram?

2 MR. SUNDARAM: No, I'm not going to actually
3 be -- I'm going to be out of town Friday. I have parents
4 visiting so I have to leave Friday morning. But I can
5 report to the Court Thursday afternoon and then if we
6 need any follow-up on Friday, I'll have whoever's on duty
7 deal with it on Friday.

8 THE COURT: Okay. So it can be a short report,
9 Michelle. So let's just try to squeeze it in even if --

10 THE CLERK: Friday?

11 THE COURT: On Thursday.

12 THE CLERK: Thursday at 11.

13 THE COURT: Judge Levy is on duty in the
14 morning. So can we just do it right at 2 o'clock? I'll
15 make it hopefully a ten minute or 15 minute --

16 THE CLERK: Okay.

17 THE COURT: Okay? All right. So I'm going to
18 say -- so here's what I'm going to do. I'm going to
19 release Mr. Burgess today on a \$30,000 bond. All right?
20 He needs to get into a shelter with the assistance of the
21 Federal Defenders tonight. He's going to have location
22 monitoring tonight. He's going to be on home detention
23 immediately. Tomorrow he will participate in a hearing
24 and Mr. Sundaram, you'll be on top of this so you know
25 exactly what's happening and what the plan is from the

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1 state court. Assuming that the AOT is ordered, there
2 needs to be coordination with Pretrial Services so they
3 know kind of what the situation is there and if he has
4 medical appointments and things like that because they'll
5 be doing their location monitoring.

6 There should be no reason for Mr. Burgess to be
7 leaving the shelter which will be his residence for
8 anything other than the court appearances, treatment,
9 meeting with the AOT health professionals. Those are
10 basically it. Or unless he speaks with Pretrial Services
11 for specific reasons that he needs to go anywhere.

12 He must stay away from the victims, the three
13 Jane Does. No communication electronically, certainly
14 know in-person visits and no telephone calls. So if
15 there's any attempt to contact any of these three women,
16 that will be a violation automatically of your conditions
17 of release. So no contact with those people. All right?
18 Yes, Mr. Sundaram?

19 MR. SUNDARAM: (Inaudible).

20 THE COURT: Oh, okay.

21 (Pause in proceedings)

22 MR. SUNDARAM: Your Honor, since his hearing is
23 tomorrow morning by video conference and the agents have
24 his phone and my understanding is they're planning to
25 hold onto it for now as arrest evidence and it's not

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1 physically here, I would ask if Mr. Burgess could come to
2 my office, be there tomorrow morning by 10 o'clock in the
3 morning so that we could put him on the video. I think
4 the hearing can go on without him but he'd like to
5 attend.

6 THE COURT: Yes.

7 MR. SUNDARAM: And that way we may also be able
8 to just to talk to him and --

9 THE COURT: Yes. And I'll count that as a
10 visit with the attorney because he'll be in your office.
11 All right? So that would be fine.

12 So and then the other conditions, I'd like his
13 father or some other suretor, acceptable suretor, to sign
14 by Friday. So are there any questions about the
15 conditions --

16 MR. SUNDARAM: No.

17 THE COURT: -- and what needs to happen? All
18 right. So Mr. Burgess, do you have any questions about
19 your conditions of release?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. Let me add also that
22 you may not commit any crimes while you are on release.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: You may not possess any explosive
25 devices or components to make explosive devices.

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And you must show up for all your
3 court appearances.

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right? So no possession of
6 firearms, no possession of explosives, bomb making
7 materials, any of that.

8 THE DEFENDANT: By federal law, ma'am, I'm
9 special need, I can't have that anyway.

10 THE COURT: I'm sorry? I can't hear you but I
11 also want Mr. Sundaram to -- your client wanted to say
12 something.

13 (Pause in proceedings)

14 THE COURT: Mr. Sundaram, what did your client
15 want to say?

16 MR. SUNDARAM: I think he exhibited some
17 knowledge that he's a prohibited person under federal law
18 so he couldn't have whatever he --

19 THE CLERK: Explosive device.

20 MR. SUNDARAM: Yeah.

21 THE COURT: Okay. So Mr. Burgess, this is very
22 serious.

23 THE DEFENDANT: I understand.

24 THE COURT: All right? What you're charged
25 with is very serious.

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Your trial has not yet happened so
3 you still need to face the allegations against you.

4 THE DEFENDANT: I understand.

5 THE COURT: All right? And I know you have
6 some mental health challenges and I know you're taking
7 medication. The doctors are telling us that as long as
8 you take your medication you can control things.
9 Assuming that the behavior that you're being charged with
10 is because of your mental health challenges -- it may not
11 be. We don't know that. But because of what has been
12 presented to me, I'm willing to take a chance on you.
13 But it's really up to you whether you stay out in the
14 community even if it's in a shelter or you go to MDC
15 where you're not going to get the treatment that you
16 need. And it's not a pleasant place to be.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right? So your goal is to
19 avoid going to MDC. And the way you do that is you take
20 all your medication as you're supposed to.

21 THE DEFENDANT: Yes.

22 THE COURT: Even if you hate doing it, you have
23 to do it.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And you have to listen to what the

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1 doctors tell you in terms of your treatment.

2 THE DEFENDANT: Yes.

3 THE COURT: And you have to be where you're
4 supposed to be and not go where you're not supposed to
5 be.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: All right?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: So there'll be people helping you
10 but ultimately it's up to you. If you mess up on any of
11 these things, all right, and the Court finds out, and
12 we're going to be monitoring you so it's pretty clear
13 that we will find out what you're doing --

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: -- then there's a very high
16 likelihood you're just going to end up at MDC.
17 Understand?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. So I want you to take
20 this seriously and I want you to understand the
21 consequences. I'm also asking your father to step in as
22 a suretor because he'll be an extra set of eyes on you
23 and he can talk to you to convince you when you think
24 that it might not be serious enough for you to pay
25 attention. All right? And he's going to put his money

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1 on the line because I'm going to ask him to sign a
2 \$30,000 bond. So if you don't comply with all your
3 conditions, you go to jail and your father pays \$30,000.
4 I'm sure you don't want that to happen.

5 THE DEFENDANT: I don't, ma'am.

6 THE COURT: All right.

7 THE DEFENDANT: Thank you.

8 THE COURT: Do you know what you're supposed to
9 do?

10 THE DEFENDANT: Yes. Follow the conditions and
11 take my medication, listen to the doctors. Whatever I
12 have to do, I go to with permission from the Court.

13 THE COURT: All right. And listen to Pretrial
14 Services. I know you've had some problems with probation
15 in the past. I don't know what those were. Going
16 forward you need to pay attention to the Pretrial
17 Services folks. And if I hear from them that you're not
18 complying or you're not taking things seriously, that
19 could be problems for you.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right.

22 THE DEFENDANT: I understand.

23 THE COURT: Okay. So I'm going to give you
24 this to sign. Actually, I just want to add the suretor
25 by Friday.

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1 (Pause in proceedings)

2 THE COURT: All right. So I'm going to have
3 the next court appearance be Thursday at 2 o'clock here
4 and I'd like to hear what's going on at that point. All
5 right? And Mr. Burgess, you need to be here so that I
6 can check in and see how things are going.

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right. Thank you.

9 THE CLERK: Thanks, everyone.

10 (Matter concluded)

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C E R T I F I C A T E

I, MARY GRECO, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 12th day of October, 2022.



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